

Translation

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PCT/EP2003/005935

INTERNATIONAL COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 0000053644	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/005935	International filing date (day/month/year) 06 June 2003 (06.06.2003)	Priority date (day/month/year) 13 June 2002 (13.06.2002)
International Patent Classification (IPC) or national classification and IPC C08G 18/40		
Applicant BASF AKTIENGESELLSCHAFT		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 3 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 06 November 2003 (06.11.2003)	Date of completion of this report 20 August 2004 (20.08.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International Application No.

PCT/EP2003/005935

## I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

- ☐ the international application as originally filed.
- ☒ the description, pages 1-17, as originally filed,  
 pages \_\_\_\_\_, filed with the demand,  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_,  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☒ the claims, Nos. 1-17, as originally filed,  
 Nos. \_\_\_\_\_, as amended under Article 19,  
 Nos. \_\_\_\_\_, filed with the demand,  
 Nos. \_\_\_\_\_, filed with the letter of \_\_\_\_\_,  
 Nos. \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☐ the drawings, sheets/fig \_\_\_\_\_, as originally filed,  
 sheets/fig \_\_\_\_\_, filed with the demand,  
 sheets/fig \_\_\_\_\_, filed with the letter of \_\_\_\_\_,  
 sheets/fig \_\_\_\_\_, filed with the letter of \_\_\_\_\_.

2. The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

4. Additional observations, if necessary:

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	5, 8, 14, 15	YES
	Claims	1-4, 6, 7, 9-13, 16, 17	NO
Inventive step (IS)	Claims		YES
	Claims	1-17	NO
Industrial applicability (IA)	Claims	1-17	YES
	Claims		NO

## 2. Citations and explanations

Reference is made to the following document:

D1: CH 426 252 A (BASF AG) 15 December 1966  
(1966-12-15)

Novelty (PCT Article 33(2))/Inventive step (PCT Article 33(3))

In the letter of 30 April 2004, the applicant states that claim 7 in the version filed with the letter of 5 November 2003 has been incorporated in claim 1.

The current method claim 1 contains the conversion of polyisocyanates a) with "b) at least one acrylate polyol having a hydroxyl number between 15 and 500 mg KOH, which can be produced by copolymerizing hydroxy-functional (meth)acrylates with ethene...".

If page 5, lines 5 to 13, "Furthermore, they [the acrylate polymers] can also be produced by copolymerizing the acrylate monomers with other aliphatic or aromatic, ethylenically unsaturated monomers...", is used to interpret claim 1, the acrylate polyol can be produced by the aforementioned copolymerization, but this does not represent a

**restriction.**

Therefore the objections concerning novelty and inventive step, as per the written opinion of 16 March 2004 with respect to D1, are upheld.

The polyol mixture claimed in claim **17** and consisting of at least one acrylate polyol and at least one polyether alcohol or a polyester alcohol, which is suitable for producing PU foamed materials, is also anticipated by D1 in a manner prejudicial to novelty, since, in D1, example 1, the resultant OH-containing mixed polymer, based on acrylic acid 4-hydroxybutyl ester, is mixed with polypropylene glycol as polyether, resulting in an elastic foamed material (D1: example 1).

Therefore the subject matter at least of the current independent claims **1, 16 and 17** is anticipated and the application thus fails to meet the requirement of PCT Article 33(2).